AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVIEW PETITION NO. 48 of 2007

PETITIONER : Kanhaiya Lal Mehar

VERSUS

RESPONDENTS : High Court of Chhattisgarh & Others

Post for order on 7th August, 2007

Sd/-
Satish K.Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVIEW PETITION No. 48 of 2007

PETITIONER : Kanhaiya Lal Mehar Aged about 44 Years, S/o, Late Shri Damrudhar Mehar, R/O, Chakradharnagar, Mohalla Sethi Nagar, Near Shiv Mandir, Raigarh (C.G.)

VERSUS

RESPONDENTS :
1. High Court of Chhattisgarh Through: The Registrar General High Court of Chhattisgarh Bilaspur (C.G.)
2. High Court of M.P. Through: The Registrar General, High Court of Madhya Pradesh, Jabalpur (M.P.)
3. The District Judge, District Raigarh (C.G.)

REVIEW PETITION UNDER ORDER 47 RULE 1 OF THE CIVIL PROCEDURE CODE, 1908.

SB: Hon'ble Shri Satish K. Agnihotri, J.

BY CIRCULATION

ORDER

(Passed on .....7.th...day of August, 2007)

1. This review petition is considered in the Chamber under the provisions of Rule 76(2) of the High Court of Chhattisgarh Rules, 2005.

2. This petition seeks review of judgment and order dated 05.12.2006 passed by this Court in W.P. No. 4296 of 1994 on several grounds. The petitioner, basically seeks review on the following ground as stated in para 14 of the review petition. The same is quoted below:

> "14. .....the Hon'ble Division Bench was of the opinion that though the grounds of violation of natural justice pertaining to the conducting of the Departmental Enquiry was pleaded in the petition, it appears that the same was not stressed upon while the petition was being decided and therefore, the Hon'ble Division Bench was of the opinion that the said ground can only be considered by the Hon'ble Single Bench and for which the petitioners can have the liberty of filing the Review Petition according to the Hon'ble Division Bench the said ground raised by the petitioners never been decided in the orders passed by the Hon'ble Single Bench would not come within the ambit of review appeal and therefore, it was with this observation that

the petitioners had withdraw the writ petition seeking a liberty preferred a review petition from this Hon'ble Court."

3. The averments made by the petitioner as stated above is not on the basis of any document or observation made in the order dated 23.04.2007 passed by the Hon'ble Division Bench in Writ Appeal No. 38/2007. The order reads as under:

> "Learned counsel appearing for the appellant seeks leave of this Court to withdraw this writ appeal.
>
> (2) Permission sought for is granted. Accordingly, the writ appeal is disposed of as withdrawn. However, liberty is reserved to the appellant to file review petition, if he so desires. Ordered accordingly."

4. The practice of making statement in the argument or averment in the pleadings without there being any basis is impermissible in law. It is expected that the advocates appearing in the matter or drafting the pleadings, should restrain themselves from making such observations which is neither recorded in the judgment/order of the Court, nor is there any basis for the same.

5. In the present case, the writ appeal was dismissed as withdrawn at the request of learned counsel appearing for the appellant (review petitioner) and liberty was reserved to the appellant (review petitioner) to file review petition, if so desired.

6. The Hon'ble Supreme Court in the matter of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another**[1], in an identical situation, wherein learned counsel appearing for one of the parties stated in the said case that "he never made such concession", it was observed as under:

> "4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K.Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents

there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was drawn, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

7. Further, in the matter of **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd & Others**[2], the Hon'ble Supreme Court referred and approved the observations made in the matter of State of Maharashtra Vs. Ramdas Shrinivas Nayak & another (supra).

8. This practice of making unwarranted statements or averments in the pleading and attributing the same to the Court is deplorable and deserve to be deprecated.

9. The petitioner has sought review of the petition on other following grounds:

"A. That the enquiry process was vitiated on the ground of violation of principles of natural justice. The disciplinary authority neither appointed any enquiry officer nor appointed any presenting officer on behalf of the management to prove the Article of Charges against the petitioner. On the contrary, he himself became the enquiry officer as well as the presenting officer. The disciplinary authority acted as a prosecutor and as a judge. Therefore, there was a clear violation of principles of natural justice.

B. That, this Hon'ble High Court ought to have considered the grounds raised by the petitioners that, Disciplinary Authority could not have acted as Presenting Officer on behalf of management and also could not have conducted any examination in chief of the management witnesses and not cross examined the defense witnesses.

C. That, this Hon'ble High Court ought to have considered the grounds raised by the petitioners that after completion of the enquiry against the petitioner, the copy of the findings of the Enquiry Officer/Disciplinary Authority was also not supplied to the petitioner.

D. That, this Hon'ble High Court ought to have considered the grounds raised by the petitioners that, prior to issuing the punishment order to the petitioner, the Disciplinary authority had also not issued the Show Cause Notice on the proposed punishment imposed by the Disciplinary authority.

E. That, this Hon'ble High Court ought to have considered the fact, that Disciplinary authority could not have issued the punishment order alongwith findings of the enquiry.

F. That this Hon'ble Court also ought to have considered the fact that the punishment given to the petitioner was not commensurate to the charges.

Even otherwise, the punishment awarded is shocking to the conscience and is highly disproportionate to the alleged charges.

The charges leveled were never, such which warranted a capital punishment to the petitioner.

G. That the fact that the disciplinary authority did not even wait for the completion of the preliminary investigation on the alleged charges leveled against the petitioner goes to reveal the predetermined approach of the disciplinary authority."

10. The averments of the petitioner in review petition is that this Court while hearing the matter has ignored the above stated grounds, which have been taken for the first time in the review petition.

11. I have carefully gone through the arguments/grounds raised in the petition which are as under:

"(1) That the learned Appellate Authority's order is unreasoned and contrary to law.

(2) That the show cause notice is only on two grounds, but the proceedings be initiated on number of charges, that is against the natural justice.

(3) That the charges should not be proved merely on the basis of presumption and without material present on record; presumption cannot be drawn against the petitioner.

(4) That the order is legally incorrect in view of Ramjan case.

(5) That the charges leveled against him are not too sever and punishment of compulsory retirement is too severe looking to the circumstances of the case.

(6) That the learned Disciplinary Authority and the Appellate Authority erred in their finding that the petitioner has committed grave misconduct for sending complaint direct to the High Court. In fact, the petitioner is entitled to send complaint to the High Court.

(7) That the non-supply of the necessary documents is also a ground for setting aside the order of punishment of compulsory retirement.

(8) That the order of compulsory retirement is not based on material present on record and evidence of witnesses has also not been properly appreciated by the Disciplinary Authority, as well as Appellate Authority.

(9) That the impugned order is against the natural justice and contrary to the provisions of law, hence deserves to be set aside."

12. The ground no. A raised herein has been dealt with in detail in the judgment and order sought to be reviewed in this petition, except that whether the disciplinary authority is under an obligation to appoint an enquiry officer. It is well settled principle of law that the enquiry officer is a representative of the disciplinary authority. If the disciplinary authority himself conducts the enquiry, there is no illegality or infirmity in law. The Hon'ble Supreme Court in the matter of **Pankajesh v. Tulsi Gramin Bank and another**[3], observed as under:

> "**6.** Thus an enquiry, under the Regulation may be delegated to a person higher in rank than the delinquent officer, in the case of an officer. But in this case we do not find any substantial miscarriage of justice prejudicial to the petitioner for the reason that though it is always desirable that an officer higher in rank than the delinquent officer should be directed to conduct an enquiry, the enquiry is conducted as a delegate of the disciplinary authority. Therefore, the ultimate decision is to be taken by the disciplinary authority. By mere delegating the enquiry whether the enquiry officer is of the same cadre or of higher grade than that of the petitioner, it did not cause any material irregularity nor resulted in any injustice to the petitioner. Under these circumstances, we do not find any illegality warranting interference."

13. The second ground that the disciplinary authority could not have acted as presiding officer on behalf of the management and also could not have conducted any examination-in-chief of the management witnesses and not cross examined the defence witnesses, was not raised in the writ petition. The third ground that a copy of the findings of the enquiry officer/disciplinary authority was also not supplied to the petitioner was

neither raised in the grounds of the petition, nor argued at the time of hearing. The fourth ground to the effect that prior to issuing the punishment order to the petitioner, the disciplinary authority had not issued show-cause-notice on the proposed punishment, was also not one of the grounds in the petition nor the same was argued in the Court. The fifth ground that the disciplinary authority could not issue the punishment order alongwith the findings of the authority, was also not one of the grounds raised in the petition nor was the same argued in the course of hearing. The next ground with regard to the disproportionate punishment was also not one of the grounds which was either raised or argued.

14. By this review petition, the petitioner seeks a fresh hearing of the case on altogether new grounds which are impermissible in law. The grounds which are neither raised nor argued in the writ petition should also not be permitted to be raised before the appellate authority. The judgment and order dated 05.12.2006 has considered all the points raised and argued in the course of hearing at length and there is no error apparent on the face of the record.

15. The petitioner has not pointed out any manifest error on the record and the petitioner has not further brought into the notice, any new fact which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure, even in exercise of review jurisdiction by the High Court under Article 226 of the Constitution. The applicant has not produced any new ground for

review, except the same ground which has been considered and decided in the writ petition.

16. Principle of law is well settled by several judicial pronouncements of the Hon'ble Supreme Court in the cases of **Smt. Meera Bhanjan Vs. Smt. Nirmala Kumar Choudhary**[4], **Lily Thomas, etc. Vs. Union of India and others**[5], **Ajit Kumar Rath Vs. State of Orissa and others**[6], **Government of T.N. and Others Vs. M.Ananchu Asari and others**[7].

17. Recently, in the matter of **Kerla State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and others**[8], the Supreme Court observed as under:

> "**10.** This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31-12-1996. This is a finding of fact recorded by this Court on the basis of appreciation of evidence produced before the Court. In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Applying the well settled principles of law to the present case, there is no good ground available for review of the order dated 05.12.2006. The

petitioner seeks an opportunity to argue the entire case a fresh under the garb of review petition, which is not permissible and tenable in law.

19. I am constrained to observe that the practice of raising new grounds in the appellate forum or in the review petition with the contention, that the same was raised and argued in the Court passing the order which is sought to impugned in an appeal or sought be reviewed in the same Court is opposed to judicial decorum and deserves to be viewed seriously.

20. As a result and in view of the foregoing, the review application is dismissed.

Sd/-
Satish K.Agnihotri
Judge

1. 1982(2) SCC 463
2. 2003(2) SCC 111
3. AIR 1997 SC 2654
4. AIR 1995 SC 455
5. AIR 2000SC 1650
6. AIR 2000 SC 85
7. (2005) 2 SCC 332
8. (2005) 6 SCC 651

Amit